

ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION



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Arizona Corporation Commission

TOM FORESE – Chairman  
BOB BURNS  
ANDY TOBIN  
BOYD DUNN  
JUSTIN OLSON

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IN THE MATTER OF THE FORMAL  
COMPLAINT AGAINST ARIZONA PUBLIC  
SERVICE COMPANY FILED BY STACEY  
CHAMPION AND OTHER ARIZONA PUBLIC  
SERVICE COMPANY CUSTOMERS.

DOCKET NO. E-01345A-18-0002

**STAFF'S POST-HEARING BRIEF**

**I. INTRODUCTION.**

The Utilities Division ("Staff") hereby submits its Post-Hearing Brief. Staff's analysis and findings in this case support the representation in the Settlement Agreement that APS residential customers would experience an average increase of 4.54 percent. Champion has failed to meet the burden of proof in this case, which under the lowest of possible standards, would require the Complainant to demonstrate by a preponderance of the evidence that APS's rates are unjust or unreasonable. Champion's Complaint should be dismissed for this reason. The record in the case does demonstrate that enhancements in the area of customer education and the establishment of a stakeholder group to provide input on how to best address and improve upon rate increase notice issues may be appropriate.

**II. STATEMENT OF FACTS.**

On January 3, 2018, Stacey Champion ("Complainant" or "Champion") filed a formal complaint against Arizona Public Service Corporation ("APS") with the Arizona Corporation Commission ("Commission"). The Champion complaint, signed by Ms. Champion, was submitted in the form of a Change.org petition including Ms. Champion's name and the name of 425 other individuals characterized as customers of APS. The Complaint related to rate and billing issues arising from APS's last rate case (Docket No. E-01345A-16-0036 et al.) but, focused largely upon whether Finding of Fact No. 334 of Decision No. 76295 (the "Decision"), which stated that "Under the terms of the Settlement Agreement, the average bill impact is 4.54 percent for residential

1 Customers<sup>1</sup> was accurate. Champion contends that this statement is not accurate, and that her bill  
2 impact under the new rates approved by the Decision exceed 4.54 percent, and that other APS  
3 residential customers have experienced similar bill impact effects.<sup>2</sup> Champion further requested for  
4 relief that the Commission hold a hearing on her Complaint to determine if the real average bill  
5 impact on residential customers of the rates approved in the Decision is greater than 4.54 percent and,  
6 if so, what effect this has on APS's revenue and the overall reasonableness and justness of APS's  
7 new rates and charges.<sup>3</sup>

8 By Procedural Order entered on March 5, 2018, Chief Administrative Law Judge ("ALJ")  
9 Rodda found that Complainant's Response filed on February 13, 2018 was responsive to APS's  
10 motion, and Ms. Champion was thereafter allowed to proceed with her complaint. Mr. Richard  
11 Gayer ("Gayer") and Mr. Warren Woodward ("Woodward"), who were also parties in APS's last rate  
12 case, were permitted to intervene in this matter and participate as parties.

13 On June 21, 2018 Chairman Forese filed a letter in this docket requesting that the Staff  
14 participate in this proceeding. By Procedural Order of August 10, 2018, following a procedural  
15 conference, Staff was permitted to participate in this proceeding. Chief ALJ Rodda entered a  
16 procedural schedule pursuant to which the Complainant, APS, Gayer, Woodward and Staff filed  
17 prepared testimony and, in Staff's case, a Staff Report, and the matter proceeded to hearing.

18 Hearings were held on September 25-28, and October 1, 2018. APS, the Complainant, Gayer,  
19 Woodward, and Staff participated in the hearings, and presented prepared and oral testimony and  
20 exhibits. In addition, Chief ALJ Rodda permitted the presentation of numerous public comment,  
21 some in person on September 25, 2018 and the remainder by telephone. At the close of the October  
22 1, 2018 hearing, Judge Rodda set the deadline for filing post-hearing briefs on October 26, 2018 and  
23 reply briefs on November 16, 2016.

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26 <sup>1</sup> Decision No. 76295 at 103.

27 <sup>2</sup> See Champion Response to APS's Motion for a More Definite Statement/Motion to Dismiss at 2-  
28 3 (February 13, 2018).

<sup>3</sup> *Id.* at 3-4.

1 **III. PROCEEDINGS UNDER A.R.S. § 40-426.**

2 **A. Formal Complaints Under A.R.S. § 40-246.**

3 Champion's complaint was filed pursuant to A.R.S. § 40-246. A.R.S. § 40-246 authorizes the  
4 Commission to entertain a complaint by twenty-five or more prospective or existing consumers or  
5 purchasers, such as that at issue here, as to the reasonableness of the rates or charges of a public  
6 service corporation.<sup>4</sup> Letters were filed by in the Docket by Commissioners Tobin and Burns, and an  
7 inquiry was made at the end of the hearing by Chief ALJ Rodda as to what remedies the Commission  
8 could order if the complainant met his/her burden of proof establishing that the utility's rates were  
9 unreasonable.<sup>5</sup>

10 A.R.S. § 40-246, while providing consumers with a mechanism to call into question the  
11 reasonableness of rates or charges of a public service corporation does not mandate any particular  
12 remedies upon a complainant's demonstration of unreasonableness. A.R.S. § 40-246(C) does provide  
13 for a hearing on the complaint.

14 The issue raised in Arizona Attorney General ("AG") Opinion 69-6 was "Does A.R.S. Sec.  
15 40-246(A)...require the Commission, upon the filing of such a complaint, to hold a full-scale rate  
16 hearing?" The Answer was "No." The AG opined that "The procedure set up by the foregoing  
17 statute is, we believe, an activator procedure designed to initiate an inquiry by the Corporation  
18 Commission who has the power over rates."<sup>6</sup> Concerned with the expense of a full blown rate case if  
19 required each time a complaint was filed, the AG interpreted the statutory provision requiring a  
20 hearing to be a mechanism by which an inquiry may be initiated into the reasonableness of the rates  
21 and charges of a public service corporation. Even if such a mechanism was utilized as the means of  
22 commencing such an inquiry, it would only be after such a hearing that the Commission would  
23 determine whether there is sufficient evidence such that a full-scale rate hearing or some other  
24 remedy short of a full-scale rate hearing may be warranted.<sup>7</sup> Thus, the process under A.R.S. § 40-246  
25 is two-fold:

26  
27 <sup>4</sup> See *Qwest Corp. v. Kelly*, 204 Ariz. 25, 30, ¶ 13 (App. 2002).

28 <sup>5</sup> Tr. Vol X at 954-955.

<sup>6</sup> Ariz. Atty. Gen. Op. 69-6 (Feb. 5, 1969).

<sup>7</sup> *Id.*

1 (1) an initial hearing to determine whether the complainant has met her or his burden of proof and (2)  
2 if the burden of proof has been met, the Commission can institute appropriate remedies.

3 Other jurisdictions have similar statutory schemes that provide for an inquiry into the  
4 reasonableness of rates and charges by a public utility.<sup>8</sup>

5 Underlying the Commission's jurisdiction over a complaint filed under A.R.S. § 40-246  
6 regarding the reasonableness of rates is its extensive constitutional powers over public service  
7 corporations under article XV, § 3 of the Arizona Constitution.<sup>9</sup>

8 Given the Commission's exclusive and plenary authority over ratemaking, remedies up to,  
9 and including, a full-scale rate case are reasonably provided for.<sup>10</sup> Even APS concedes as much.<sup>11</sup>  
10 Here, within the context of the statutory scheme, A.R.S. § 40-246 reasonably provides for remedies  
11 other than a full-scale rate case where justified by the Commission's determination after the initial  
12 evidence has been considered.<sup>12</sup>

13 While the Commission may deem a full-scale rate hearing justified based upon evidence  
14 presented at the hearing, the statute does not expressly or impliedly foreclose other prospective  
15 remedies.<sup>13</sup> Because of the Commission's exclusive and plenary authority to determine the just and  
16 reasonable rates charged by public service corporations for their services, as part of its executive and  
17 legislative function, it follows that the Commission has broad discretion in resolving such a formal  
18 complaint provided that it acts within its jurisdiction and follows its rules and procedures.<sup>14</sup> Thus, it  
19 follows that the Commission would have the ability to reopen and modify the prior Commission

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20 <sup>8</sup> See ME St. T. 35-A §§ 1302 et seq.; ID ST § 61-612; *see also, e.g., Duquesne Light Co. v.*  
21 *Pennsylvania Pub. Util. Comm'n*, 715 A.2d 540, 544-45 (Pa. Commw. Ct. 1998) (noting that the  
22 initial burden falls upon the customer to prove that a charge is no longer reasonable) (citation  
omitted).

23 <sup>9</sup> *Qwest Corp.*, 204 Ariz. at 30, ¶ 13 (citation omitted); *see also id.* (noting the Commission's  
24 exclusive and plenary authority over matters "solely and directly" questioning the reasonableness  
of the rates of services).

25 <sup>10</sup> *See Phelps Dodge Corp. v. Ariz. Elec. Power Co-op., Inc.*, 207 Ariz. 95, 111, ¶ 54 (App.  
2004), *as amended on denial of reconsideration* (Mar. 15, 2004).

26 <sup>11</sup> *See* APS Response to Commissioners Letters (September 25, 2018).

27 <sup>12</sup> *See* Atty. Gen. Op. No. I78-260, 1978 WL 18896 (noting that any law in conflict with the grant  
by the Constitution of power to the Commission would be unconstitutional); *see also* Ariz. Const.  
art. XV, § 3).

28 <sup>13</sup> *Cf. Pueblo Del Sol Water Co. v. Ariz. Corp. Comm'n*, 160 Ariz. 285, 287 (App. 1988).

<sup>14</sup> *See Qwest Corp.*, 204 Ariz. at 30, ¶ 12 (citation omitted).

1 decision. The vehicle to do this would be A.R.S. § 40-252. This statute provides that “[t]he  
2 commission may at any time, upon notice to the corporation affected, and after opportunity to be  
3 heard as upon a complaint, rescind, alter or amend any order or decision made by it.”

4 Because the ultimate aim of the Commission’s regulation of the monopoly is to balance the  
5 interests of the public utility and its customers and protect the public by establishing fair and  
6 reasonable rates. It is reasonable that the legislative authorization of the Commission to hear the  
7 formal complaint, which expands and extends the powers and duties of the Commission,  
8 contemplates that such a complaint may be brought at any time and resolved according to the  
9 Commission’s broad discretion, to include remedies lesser than a full-scale rate case that reasonably  
10 protect the public interest.<sup>15</sup>

11 There is a strong presumption that the established rates are just and reasonable.<sup>16</sup>

12 **B. The Burden of Proof in Activator Proceedings Under A.R.S. § 40-246.**

13 Chief ALJ Rodda also asked parties to comment on the burden of proof under A.R.S. § 40-  
14 246, and whether it should be a “clear and convincing” standard or a “preponderance of the evidence”  
15 standard.<sup>17</sup> In civil cases, the burden of proof requires one to show or demonstrate his or her position  
16 by a “preponderance of the evidence” in order to prevail. This is a lesser standard than the more  
17 rigorous “clear and convincing” standard. Typically, the “preponderance of the evidence” standard  
18 would apply in a civil case such as this case. However, the Commission is a constitutional agency  
19 with plenary and exclusive authority over ratemaking for public service corporations which is at issue  
20 in this case.

21 If one were to use the review statutes relating to appeal of rate case decisions of the  
22 Commission (A.R.S. § 40-254) as a measure of the burden of proof, the standard would be higher  
23 than the civil standard of “preponderance of the evidence.” The Commission’s constitutional

24 <sup>15</sup> See *Sw. Transmission Co-op., Inc. v. Ariz. Corp. Comm’n*, 213 Ariz. 427, 432, ¶ 24 (App. 2006);  
25 *Ariz. Corp. Comm’n v. Superior Court*, 105 Ariz. 56 (1969) (noting that the Commission’s  
constitutional authority to regulate public service corporations cannot be limited by statute).

26 <sup>16</sup> See *Simms v. Round Valley Light & Power Co.*, 80 Ariz. 145, 154 (1956) (noting the  
27 Commission’s legislative discretion in exercising its ratemaking authority to determine what  
constitutes a just and reasonable rate, to be disturbed upon judicial review only upon a showing  
28 that its conclusion was arbitrary, unsupported by substantial evidence, or otherwise unlawful).

<sup>17</sup> Tr. Vol. X at 954-955.



1 authority over ratemaking entitles its findings in this area to substantial deference and also affects the  
2 standard of proof for overturning Commission ratemaking decisions.

3 The Commission decisions that are being challenged by Ms. Champion are rate orders, which  
4 were processed and entered under Arizona Administrative Code ("A.A.C.") R14-2-103.<sup>18</sup> The  
5 Commission has full and exclusive power to set just and reasonable rates for public service  
6 corporations.<sup>19</sup> The Commission also has a wide range of legislative discretion in exercising its  
7 ratemaking authority.<sup>20</sup> To successfully challenge a Commission ratemaking decision, one must  
8 demonstrate by a "clear and satisfactory" showing that the 'Commission' order is unlawful or  
9 unreasonable."<sup>21</sup> Clear and satisfactory means clear and convincing. To meet this burden, an  
10 opponent to a Commission decision must demonstrate that the decision is not supported by  
11 substantial evidence or is arbitrary or unlawful. This is a higher standard than the preponderance of  
12 evidence standard.

13 Had Champion been a party in the last APS rate case, Champion would be required under the  
14 review statute, A.R.S. § 40-254 to demonstrate by clear and convincing evidence that the decision of  
15 the Commission was unreasonable. Because Champion, who was not a party in the rate case, is  
16 challenging the reasonableness of the rates under A.R.S. § 40-246, the question becomes whether she  
17 is entitled to a lower standard or burden of proof?

18 Staff believes that a reasonable argument can be made for either the clear and convincing  
19 standard or the preponderance of the evidence standard where a complaint has been filed under  
20 A.R.S. § 40-246 challenging the reasonableness of the rates that the utility has been authorized to  
21 charge by the Commission. However, for purposes of determining whether a complaint should go  
22 forward under A.R.S. § 40-246, Staff would support use of the "preponderance of the evidence"

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26 <sup>18</sup> A.A.C. R14-2-103 is the Commission regulation that applies to the filing and processing  
requirements for general rate cases.

27 <sup>19</sup> Ariz. Const. art. XV, Section 3; *State v. Tucson Gas, Elec. Light & Power Co. v. Ariz. Corp.*  
*Comm'n*, 15 Ariz. 294, 299, (1914).

28 <sup>20</sup> *Ariz. Corp. Comm'n v. State ex rel. Woods*, 171 Ariz. 286, 294 (1992).

<sup>21</sup> A.R.S. § 40-254.01(E).

1 standard.<sup>22</sup> However, regardless of which standard or burden of proof is used, Staff does not believe  
2 that it has been met in this case for the reasons discussed below.

3  
4 **IV. STAFF'S ANALYSIS AND FINDINGS SUPPORT THE AVERAGE BILL IMPACT**  
5 **REFERENCED IN THE SETTLEMENT AGREEMENT AND OTHER**  
6 **DOCUMENTS.**

7 Much of the controversy in this case and the basis for Champion's complaint largely comes  
8 down to the statement in the Settlement Agreement adopted in Decision No. 76295 and contained  
9 elsewhere that the average bill impact of the rate increase is 4.54 percent. Specifically, 4.1(a) in  
10 Section IV of the Settlement Agreement states: "Residential customers will have on average a 4.54  
11 percent bill impact." Staff's independent review and evaluation of the analyses performed by both  
12 Champion and APS,<sup>23</sup> led Staff to verify and conclude that the net rate case bill impact for the  
13 average residential customer is 4.48 percent based on a statistically valid sample, which represents a  
14 15.68 percent base rate bill impact less the adjustor transfer impact of 11.20 percent. Staff will  
15 briefly summarize below how it reached these conclusions.

16 Staff witness Liu noted in his Report that a randomly selected APS residential customer might  
17 not experience the exact 4.54 percent bill impact because the averaged is premised on several  
18 assumptions including:

- 19 1) It is for an "average" residential customer based on the 2015 test year;
- 20 2) The "average" customer will keep the same usage and behavior as in the test year;
- 21 3) The adjustor transfer takes place at the same time when the new rates become  
22 effective; and;
- 23 4) The cost and billing determinants used to establish each adjustor rate remain the  
24 same as in the test year.

25 Liu testified that "[i]n order to conduct a solid analysis to verify the reasonableness of the  
26 expected bill impact, at least these four assumptions must be understood and accommodated."<sup>24</sup> The

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27 <sup>22</sup> See also, *Robert M. Shaw v. Mohave Electric Cooperative*, ACC Decision No. 67112,  
28 2004WL3410778 (Jul. 9, 2004); See also R-14-3-101 which provides the standards to be applied  
if not otherwise provided.

<sup>23</sup> Timing issues prevented Staff from conducting its own independent bill impact analysis, instead,  
Staff examined and analyzed the bill impact analyses performed by the Champion and APS  
witnesses and reported on the results of its findings in Exhibit S-1.

<sup>24</sup> Staff Report, Ex. S-1 at 2.

1 “average customer” is based on usage levels and patterns in the 2015 test year for the residential  
2 class.<sup>25</sup> Changes in each customer’s usage and behavior also need to be controlled to isolate the  
3 effects of the rate changes which can be accomplished by applying test year billing determinants to  
4 the new rates for each customer when recalculating bills.<sup>26</sup>

5 **A. Staff’s Analysis and Findings with Respect to the Base Rate Bill Impact.**

6 The APS residential customer’s bill consists of two components, the base rate, and the  
7 adjustor charges.<sup>27</sup> Because APS charges customers both base rates and adjustors, it is necessary to  
8 look at the bill impact of each of these charges separately when examining these issues.<sup>28</sup> In addition,  
9 the Settlement Agreement approved two sets of rates: Transition Rates (the existing rates adjusted on  
10 a uniform basis to reflect the rate changes approved in Decision No. 76295) and new rates which  
11 reflected the new rates customers were transitioned to during the period of August 19, 2017 through  
12 May 1, 2018.<sup>29</sup> The Transition Rates allowed APS an opportunity to educate customers on the new  
13 plans and on which plan would work best for the particular customer.<sup>30</sup>

14 **1. *Staff’s Review and Findings Regarding APS’s Base Rate Bill Impact.***

15 To determine rate base bill impacts, APS used a statistically valid sample of 951,043  
16 residential customers, or the number of customers with a full year of usage data in the 2015 test  
17 year.<sup>31</sup> The base rate bill impact provided in APS Witness Miessner Direct Settlement Testimony,  
18 which is 15.90 percent (with the adjustor roll-in).<sup>32</sup> Mr. Miessner also explained this depiction of the  
19 average base rate bill impact in his rebuttal testimony in this case.<sup>33</sup>

20 **2. *Staff’s Review and Findings Regarding Champion’s Base Rate Bill Analysis.***

21 Abhay Padgaonkar, Champion’s witness, performed a similar analysis with respect to base  
22 rates. It should be noted that he used two samples in his analysis: a “mini-sample” and a probability  
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24 <sup>25</sup> *Id.*

25 <sup>26</sup> *Id.*

26 <sup>27</sup> Staff Report, Ex. S-1 at 1.

27 <sup>28</sup> *Id.* at 3.

28 <sup>29</sup> Hobbick Direct, Ex. APS-4 at 3.

29 <sup>30</sup> Hobbick Direct. Ex. APS-4 at 4.

30 <sup>31</sup> *Id.*

31 <sup>32</sup> Staff Report, Ex. S-1 at 3.

32 <sup>33</sup> Miessner Rebuttal Test., Ex. APS -3 at 2.



1 sample.<sup>34</sup> The mini-sample included 18 bills that Ms. Champion obtained from APS customers, and  
2 is not statistically valid since it is not representative of the entire residential class, was not randomly  
3 selected and does not account for seasonality.<sup>35</sup> His second probability sample was provided by APS  
4 and includes 16,237 customers with 194,844 monthly bills.<sup>36</sup> This sample is statistically valid  
5 provided it has a 99 percent confidence level.<sup>37</sup>

6 Padgaonkar analyzed the average bill impact under APS's Transitional Rates, as provided for  
7 in the Settlement Agreement, and his analysis showed that the base rate bill impact percentage (based  
8 on his probability sample, which was provided to him by APS), was 15.68 percent.<sup>38</sup> Staff found the  
9 bill impact percentage to be within reasonable sampling error, compared to APS's 15.90 percent, and,  
10 thus, found it to be consistent with APS's estimation.<sup>39</sup> On cross examination by APS's counsel,  
11 Padgaonkar also confirmed that the probability sample that APS provided him was the sample he  
12 used to confirm the accuracy of APS's 15.90 percent impact.<sup>40</sup>

13 Padgaonkar analysis then looked at customers under the new rate schedules. His base rate bill  
14 impact of 19.37 percent assumes that that all 16,237 customers in the sample he used would be  
15 moved up to a "most-like" rate schedule after the Transitional Rates period ended. However,  
16 according to APS, as of May 15, 2018, about 23 percent of the existing customers had proactively  
17 chosen a new rate schedule.<sup>41</sup> Since 23 percent voluntarily chose a new rate schedule, it is likely that  
18 a considerable portion of these customers included in the "most like" rates by Padgaonkar would not  
19 be on a most-like rate schedule, The fact that this percentage deviates from APS's estimated 15.90  
20 percent bill impact, is likely caused by Padgaonkar's failure to take into account the customers  
21 migrating to new rate schedules, and instead just including them in the "most like" rate schedule  
22 category.

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24 <sup>34</sup> *Id.*

25 <sup>35</sup> *Id.*

26 <sup>36</sup> *Id.*

27 <sup>37</sup> *Id.*

28 <sup>38</sup> Staff Report, Ex. S-1 at 3; Padgaonkar Direct Test., Ex. C-1 at 47.

<sup>39</sup> Staff Report, Ex. S-1 at 3.

<sup>40</sup> Tr. Vol. I at 162.

<sup>41</sup> Staff Report, Ex. S-1 at 3; Padgaonkar Dir. Text., Ex. C-1 at 48.

1 Padgaonkar also considered the base rate impact by analyzing the results of APS's new "most  
2 like" rate schedules.<sup>42</sup> He analyzed the base rate impact by analyzing the impact of customer's  
3 actual new rate schedules. For this he used two groups, those with "similar" schedules (customers  
4 who stayed in the same non-timed, time of use or demand rate schedules) and those with "dissimilar"  
5 schedules (new rate schedule that is not familiar to customer's previous schedule, e.g., going from a  
6 non-timed schedule to a time-of-use schedule). The base rate bill impact for these two groups, 19.14  
7 percent for "similar," and 13.70 percent for "dissimilar" vary greatly, both between themselves, and  
8 from the APS 15.90 percent, and Padgaonkar's 15.68 percent for Transitional Rates.

9 As Liu explained in his Staff Report, it can be assumed that customers choosing a dissimilar  
10 rate schedule are likely more informed and pay more attention to their bills since they proactively  
11 chose what they believed to be the most economical rates schedules for their situation.<sup>43</sup> These same  
12 customers are also likely to change their behavior on the new rate schedule. Liu used the example  
13 depicted in a graph in APS witness Hobbick's rebuttal testimony which showed that customers who  
14 selected a time-of-use rate over a non-time of-use- rate, try to shift as many kWh as possible to off-  
15 peak hours. Hobbick's graph shows a significant reduction in system load when the on-peak window  
16 begins and that the opposite is true when off-peak hours begin.<sup>44</sup> This phenomenon can explain why  
17 the base rate bill impact of the "dissimilar" group is much lower than the "similar" group and the  
18 estimated average bill impact of 15.90 percent.<sup>45</sup>

19 Staff concluded that the bill impact under the Transitional Rate analysis more accurately  
20 estimates the base rate bill impact than does the "most-like," or "actual new rate" "similar,"  
21 "dissimilar" analysis, because the deviation in the "most like" rates analysis may have been caused  
22 by not all customers being migrated to "most-like" rates by APS, and because the change in customer  
23 behavior with the "dissimilar" rates fails to fulfill Staff Assumption No. 2 (S-1, p. 1), that the  
24 average customer will keep the same behavior as in the test year.

### 25 3. *Staff's Conclusions Regarding Base Rate Bill Impact Calculations.*

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27 <sup>42</sup> Staff Report, Ex. S-1 at 3; Padgaonkar Dir. Text., Ex. C-1 at 51.

<sup>43</sup> Staff Report, Ex. S-1, at 4; Hobbick Reb. Test., Ex. APS-5.

28 <sup>44</sup> *Id.*

<sup>45</sup> *Id.*

Staff concluded that Padgaonkar's 15.68 percent impact under the Transitional Rates is more representative of the base rate bill impact than that produced under his more differentiated approach. It also confirms APS's 15.90 percent (within reasonable sampling error) base rate bill impact, before the adjustor sweep is factored in.

**B. Staff's Analysis and Findings Regarding the Bill Impact Related to the Adjustor Transfer.**

The adjustor transfer constitutes the most significant difference between APS's and Champion's overall bill impact analysis. Padgaonkar calculates the adjustor transfer to be 4.74 to 4.87 percent under a various calculations; APS calculates the adjustor transfer to be 11.36 percent; and Staff calculates the adjustor transfer to be 11.20 percent. This has a dramatic difference on the bill impacts calculated by the parties.

Section VIII of the Settlement Agreement provides for the transfer of items from the adjustment mechanisms to base rates. Section 8.1 of the Agreement states that the adjustor rates will be zeroed out or reduced, consistent with their Plans of Administration ("POA"). Section 8.3 provides that on the effective date of the new rates contained in the Agreement, the adjustor rates will be reduced to reflect the removal of the amounts identified in Appendix D. This has been referred to in this proceeding as the "adjustor sweep" and it is something that occurs in most rate cases as provided in the respective POAs.

There are seven adjustors that must be considered: 1) the Energy Efficiency Adjustor ("DSMAC"); 2) the Environmental Impact Surcharge ("EIS"), 3) the Four Corners Rate Rider ("FCRR"); 4) the Lost Fixed Cost Recovery ("LFCR") mechanism; 5) the Systems Benefit Charge ("SBC"); 6) the Renewable Energy Adjustor Clause ("REAC"), and 7) the Transmission Cost Adjustor mechanism ("TCA"). As Staff witness Liu noted in his testimony, each of the adjustor mechanisms utilized by APS is governed by its own POA. Staff witness Liu noted in his testimony that "[d]ue to the nature of an adjustor mechanism, its rate varies from year to year with or without a rate case, which can be caused by the change of the budget, under-or over-collection from the prior year, and change of the billing determinants."<sup>46</sup>

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<sup>46</sup> Staff Report, Ex. S-1 at 5.

1                   **1. Staff Review and Findings Regarding APS's Bill Impact Relating to the**  
2                   **Adjustor Transfer.**

3                   For APS, Staff used the 11.36 percent adjustor transfer impact that is documented in Mr.  
4                   Miessner Direct Settlement Testimony.<sup>47</sup> Staff found that Miessner's analysis conformed to all four  
5                   of his assumptions. In addition, Miessner performed what Liu terms a "backward" calculation to  
6                   verify the adjustor transfer bill impact.<sup>48</sup> This refers to a calculation that starts from the revised  
7                   actual adjustor rates on or after August 19, 2017, and recalculating the adjustor rates backward  
8                   excluding the adjustor transfer from the revenue requirement.<sup>49</sup> Liu notes that the bill impact of the  
9                   two rates with the test year monthly "typical" customer usage of 1,068 kWh are then performed.<sup>50</sup>  
10                  Miessner did such a calculation which provided verification of an accurate adjustor transfer bill  
11                  impact. The impact of the adjustor transfer is 11.20 percent; the minor 16 basis point difference  
12                  when compared to the estimated 11.36 percent could, according to Liu, be attributed to a change in  
13                  billing determinants from the test year.

14                   **2. Staff's Review and Findings Regarding Champion's Bill Impact Related to the**  
15                   **Adjustor Transfer.**

16                  In contrast, Padgaonkar's analysis shows an average adjustor impact percentage of 4.74 to  
17                  4.87.<sup>51</sup>

18                  In his testimony, Padgaonkar notes that, since the bill impact calculated for the Settlement is  
19                  based on the 2015 test year in this case.

20                  Padgaonkar's calculated transfer bill impact of 4.74 to 4.87 percent reflects the effective  
21                  revised adjustor rates on August 19, 2017 (the date that the new rates from the Decision went into  
22                  effect); however, critically, it fails to capture Staff's Assumptions (3) and (4) on the timing of the  
23                  adjustor transfer, i.e., unchanged cost and billing determinants of the adjustor calculation.<sup>52</sup> It also  
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25                  <sup>47</sup> Staff Report, Ex. S-1 at 4.

26                  <sup>48</sup> *Id.*

27                  <sup>49</sup> *Id.*

28                  <sup>50</sup> *Id.*

<sup>51</sup> Staff Report, Ex. S-1 at 4; Padgaonkar Direct, Ex. C-1 at 19.

<sup>52</sup> Staff Report, Ex. S-1 at 1; i.e., Padgaonkar's analysis did not account for the timing of the  
                  adjustor transfers or account for any change in their billing determinants.

1 underestimates the bill impact of the adjustor transfer due to his inclusion of impacts beyond the rate  
2 case decision.<sup>53</sup>

3 APS witness Miessner's Rebuttal Testimony also recounts the deficiencies in Padgaonkar's  
4 calculation found by Liu, among others.<sup>54</sup>

5 **Champion Witness Abhay Padgaonkar significantly overestimate**  
6 **the bill impact.** He underestimates the bill reductions from adjustor  
7 rates, erroneously relying solely on price trends and observed rate  
8 schedules for estimating the adjustor rate reductions. Because these  
adjustor rate reductions must be netted against the base rate increase, he  
significantly overestimates the net bill impact. (Emphasis added).

9  
10 Significantly, if one does not net the adjustor rate reductions against the base rate increase, the  
11 net bill impact will be overstated by a large amount. APS witness Snook perhaps stated the effect of  
12 the adjustor sweep best:

13 This merely resulted in moving cost recovery from one element of the  
14 bill to another element, but resulted in the same amount of revenue  
15 overall being collected. This is often described as bill geography. In  
16 this instance, the base rate portion of an average customer's bill would  
be increased by an amount that was moved out of the adjustor  
mechanism and the adjustor mechanism would collect a  
correspondingly lower amount, with the sum of the two, both before  
and after the movement of cost recovery, being equal.<sup>55</sup>

17  
18 Therefore, Staff accepted the bill impact of the adjustor transfer to be 11.20 percent.

19 **3. Staff's Conclusions Regarding Adjustor Transfer Bill Impact.**

20 In summary, based upon Staff's evaluation of the APS and Champion analysis, Staff  
21 concludes that the net rate case bill impact is 4.48 percent for the average residential customer,  
22 representing a 15.68 percent base rate bill impact less the adjustor transfer impact of 11.20 percent.

23 **C. The Settlement represented that the 4.54 percent bill increase for residential**  
24 **Customers was an "average."**

27 <sup>53</sup> Staff Report, Ex. S-1 at 5.

28 <sup>54</sup> Miessner Ex. APS-3 at 2.

<sup>55</sup> Snook Direct Test., Ex. APS-6 at 9.



1 The Settlement Agreement represented that the residential customers will have **on average** a  
2 4.54 percent bill impact. The term “average” was meant to convey that many customers may fall  
3 above that percentage increase and many customers may fall below the bill increase.

4 There are many factors that affect whether given customer will experience the average rate  
5 increase of 4.54 percent. As APS witness Hobbick pointed out, factors that could affect the rate  
6 increase include: 1) differences between test year and year of billing analysis, 2) changes in weather,  
7 3) variability in load shapes between customers, 4) seasonal rate changes, 5) changes in duration of  
8 billing cycle, 6) annual changes to adjustors, and 7) customers switching rates.

9 This is not to say that the average bill impact of 4.54 percent or close to it is not representative  
10 of the impacts to be experienced by many customers. A comparison was done between the transition  
11 rates and the rates during the test year and it was found that the 951,038 customers had a 3.7 percent  
12 to 8.7 percent increase with an average impact of 4.1 percent for residential customers.<sup>56</sup>

13 In a similar analysis of customers using the new rates, it was found that 23 percent of  
14 customer would experience a rate decrease, 17 percent an average increase of 1.23 percent or less, 28  
15 percent would see an average increase of 6.3 percent and 21 percent would see an average increase of  
16 10.8 percent. The remaining 11 percent would see an increase greater than 10.8 percent. The average  
17 base rate increase across the customers is 4.1 percent.<sup>57</sup>

18 **V. CHAMPION’S CLAIM THAT APS IS OVEREARNING IS NOT SUPPORTED BY A**  
19 **PREPONDERANCE OF EVIDENCE IN THE RECORD.**

20 Padgaonkar used several months of actual data obtained from APS to make several arguments  
21 that APS is likely overearning due to the rates set by the Commission in Decision No. 76295.  
22 Padgaonkar bases this claims in part upon what it believes were inaccurate projections by APS with  
23 respect to the number of customer that would stay on the “most like” plan versus those that would  
24 proactively choose a “new plan.” As a result, he appears to be claiming that APS somehow ends up  
25

26  
27  
28 <sup>56</sup> Hobbick Direct Test., Ex. APS-4 at 4.

<sup>57</sup> *Id.* at 5.

1 with a large windfall. However, the proof offered by Padgaonkar fails to establish this by a  
2 preponderance of evidence in the record. His contention also ignores several important facts.

3 First, APS's data provided by witness Hobbick demonstrates that APS's projections were  
4 actually very close to what was projected in most cases.<sup>58</sup> On page 2 of Ms. Hobbick's Rebuttal  
5 Testimony, she found that the "actual distribution of residential customers on each of the new rate  
6 plans as of May 2, 2018 is nearly identical to the distribution assumed when allocating the revenue to  
7 be recovered from each plan."<sup>59</sup>

8 Second, because APS had to rely on projections at the time of the rate case, and projections  
9 are never entirely accurate, when the actual customer selections are made and their rates go into  
10 effect, APS will receive more revenue from some customers and less from others; making claims of  
11 over-earning speculative at best.

12 Third, Padgaonkar apparently misinterpreted Ms. Hobbick's chart (JEH-1DR) as to the  
13 breakdown of customers falling above the average suggesting that sixty percent of customers were  
14 projected to have a 6.3 or greater bill impact. This position was debunked at the hearing because one  
15 must take into account the fact that each bin contains a five percent range. The chart should actually  
16 be interpreted as demonstrating that 50 percent of customers would have an increase greater than 4  
17 and one-half percent.<sup>60</sup>

18 Fourth, Padgaonkar's calculations produced numbers which he claimed represented  
19 overearning by APS. However, those calculations and numbers which he construed as overearning  
20 could actually be tied back to Section III of the Settlement Agreement where they were expressly  
21 referenced and explained in Section 3.2. Padgaonkar had misconstrued the meaning of the numbers –  
22 they did not represent any overearning by the Company. This is also explained at length in the  
23 Rebuttal Testimony of Leland Snook, at pages 3-4. Finally, APS witness Hobbick explained that  
24 APS in the rate case used bill impacts based on annual averages.<sup>61</sup> At the time of the hearing, APS  
25 did not have actual data for a full year. Thus, the limited data that Padgaonkar obtained and analyzed  
26

27 <sup>58</sup> Hobbick Rebuttal Test. (APS Ex. 5) at 2.

28 <sup>59</sup> *Id.*

<sup>60</sup> Tr. Vol. IV at 741-742.

<sup>61</sup> Hobbick Direct, Ex. APS-4 at 6.

1 from APS to project the actual impact of the new rate plans likely resulted in an “apples to oranges”  
2 comparison with little useful purpose. She testified that that the bill impact would not be the same  
3 using less than an annual sample because of the weather and changing customer usage patterns,  
4 different customer behaviors and other factors.

5 **VI. STAFF RESPONSE TO GAYER AND WOODWARD.**

6 **1. *Gayer’s Position is Inconsistent with Every Other Party and is not Supportable.***

7  
8 Gayer testified that APS’ rates are unreasonable in that the average rate increase for  
9 residential customers was not the 4.54 percent specified by APS, but was instead much higher,  
10 “something closer to 15.5 percent.”<sup>62</sup> He explained that the adjustors were swept into the base rate  
11 without corresponding adjustor reductions.<sup>63</sup> His position with respect to the adjustors is that  
12 “whatever was ‘swept’ was simply added to the base rates. They never were zero or close to zero, as  
13 would be expected if the so-called ‘sweep’ did not really mean ‘addition.’”<sup>64</sup>

14 Gayer’s position contradicts every other party in this case, including Champion witness  
15 Padgaonkar who agrees that some reduction of adjustors occurred though Padgaonkar disagrees with  
16 APS as to the amount.<sup>65</sup> Despite this contradiction, Gayer states that Padgaonkar “is the expert I am  
17 generally agreeing with.”<sup>66</sup> Given Staff’s expert’s evaluation that the adjustor sweep was 11.20  
18 percent thus resulting in a 4.48 percent base rate increase for the average residential customer,  
19 Gayer’s allegation of unreasonableness must fail.<sup>67</sup>

20 Gayer made several other statements during his testimony at the hearings in this matter that  
21 either contradict his position or go against the Champion’s witness who he relies upon or the record  
22 evidence:

- 23 a. If the average rate increase was 4.54 percent, that means that some customer bills will  
24 increase by more than 4.54 percent, and some customer bills will decrease.<sup>68</sup>

25 <sup>62</sup> Tr. Vol. III at 470- 471.

26 <sup>63</sup> *Id.* at 471-472.

27 <sup>64</sup> Gayer Direct Test., Ex. Gayer-1 at 2-4.

28 <sup>65</sup> Tr. Vol. III at 476-477.

<sup>66</sup> Tr. Vol. III at 477.

<sup>67</sup> Staff Report, Ex. S-1 at 6.

<sup>68</sup> Tr. Vol. III at 462-463.

- 1 b. All of APS's adjustors must be approved by the Commission.<sup>69</sup>
- 2 c. He says that the base rate increase was not 4.54 percent, but, instead, was close to 14
- 3 percent.<sup>70</sup>
- 4 d. APS is double charging its customers, i.e., charging for the adjustors in both the base
- 5 rates, and through adjustor charges.<sup>71</sup>
- 6 e. Other than him, no other party to this case, including Ms. Champion's expert, whose
- 7 findings he supported, believes that there was NO adjustor sweep, i.e., subtraction, in this
- 8 case.<sup>72</sup>

9 Gayer also contends that APS customers are entitled to reparations of excessive charges for at

10 least the Transition Rates, plus interest, per A.R.S. § 40-248(a)<sup>73</sup>. However, even if the Complainant

11 can meet her burden of proof, to award reparations would require the Commission to engage in

12 retroactive ratemaking, which is prohibited under Arizona law.<sup>74</sup>

13 The Commission, in the APS rates case, and in all rate cases that it considers, sets rates

14 prospectively. Gayer's contention requires consideration of the question, may the Commission, if it

15 determines that the outcome of its decision in the underlying rate case, "correct" the outcome by

16 refunding to customers any excess or make it pay extra to cover any shortfall?

17 The answer to this question is no. "It is a fundamental rule that utility rates are exclusively

18 prospective in nature."<sup>75</sup> The rule stems from ratemaking's legislative character: legislative activity is

19 prospective,<sup>76</sup> and the legislature has delegated its ratemaking authority to the regulator; in Arizona,

20 the Commission.<sup>77</sup> To "correct" a pre-existing rate based on erroneous post-test year results, the

21

22

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23 <sup>69</sup> *Id.* at 470.

24 <sup>70</sup> *Id.* at 470-471.

25 <sup>71</sup> *Id.* at 472.

26 <sup>72</sup> *Id.* at 476-477, 1-19).

27 <sup>73</sup> Gayer Direct Test., Ex. Gayer-1 at 9.

28 <sup>74</sup> *El Paso & S.W.R. Co. v. Ariz. Corp. Comm'n*, 51 F.2d 573 (D. Ariz. 1931).

<sup>75</sup> *Narragansett Elec. Co. v. Burke*, 381 A.2d 1358, 1364 (R.I. 1977).

<sup>76</sup> *Citizens Util. Co. v. Ill Commerce Commission*, 529 N.E.2d 510, 515-17 (Ill. 1988),

<sup>77</sup> *Ariz. Corp. Comm'n v. Superior Court In and For Maricopa County*, 107 Ariz. 24, 480 P.2d 988 (1971).

1 Commission would have to order a change to a previously approved rate, then apply that change to a  
2 past period. That is the definition of retroactive ratemaking.<sup>78</sup>

3 None of the limited exceptions to the ban on retroactive ratemaking apply in this case; the  
4 regulatory notice exception, where a notice provides that rates are in effect subject to refund; (*San*  
5 *Diego Gas & Elec. Co.*, 127 FERC para 61,191, at p. 27 (2009); an expense deferral, where a utility  
6 is permitted to record costs on its books as a “deferred asset,” *Idaho Power Co.* 161 P.U.R. 4<sup>th</sup> 18  
7 (Idaho PUC, 1995); affiliate transactions, where there is notice to the utility in advance that an  
8 approved action may be disallowed in the future, *Wash. Util. & Transp. Comm’n v. Wash. Natural*  
9 *Gas Co.*, 137 P.U.R. 4<sup>th</sup> 335 (1992), hard to predict costs, *Town of Norwood v. FERC*, 53 E.2d 377,  
10 380-384 (D.C. Cir. 1995), Commission self-correction, (but, even then, the rate change must be  
11 prospective, *Bell Atl. Tel. Cos. v. FCC*, 79 F.3d 1195, 1205 (D.C. Cir. 1996), a Judicial Reversal of a  
12 Commission rate decision, or the disgorgement of illegal gains, *El Paso Electric Company*, 108  
13 FERC, para 61,071 at p. 31 (2004).

14 The facts of this case do not support any of these exceptions, and the relief that Gayer seeks  
15 would require the Commission to engage in retroactive ratemaking; this remedy, therefore, is not  
16 available in this case.

17 **2. Woodward’s Position Fails to Recognize that the 4.54 average bill impact is**  
18 **indeed an “average.”**

19 In his Rebuttal Testimony admitted at the hearing, Mr. Woodward is critical of APS’s  
20 expert’s reliance on the accuracy of the ratemaking process, instead countering that “the issue in this  
21 case is *not* APS’s ratemaking process but rather bill impacts that are far greater than the 4.54 percent  
22 average increase.”<sup>79</sup> Woodward similarly finds Ms. Hobbick’s and Mr. Snook’s testimony deficient,  
23 arguing that “the instant case is not about the process but about the result.”<sup>80</sup>

26  
27 <sup>78</sup> *San Diego Gas & Elec. Co. v. Sellers of Energy*, 127 F.E.R.C. para. 61,191, at p. 9 (2009) (citing  
*Associated Gas Distribs. v. FERC*, 898 F.2d 809, 810 (D.C. Cir. 1990).

28 <sup>79</sup> Woodward Rebuttal, Ex. Woodward-3 at 1-2.

<sup>80</sup> *Id.*



1 In referencing Attachment JEH-1DR to Hobbick's Direct Testimony<sup>81</sup>, Woodward is critical  
2 of the depiction of the rate impact to those customers whose bills show a greater increase than the  
3 4.54 percent average base rate impact because of the new rates yet is dismissive of the impact to  
4 customers who will experience significant decreases in their bills.<sup>82</sup> As justification for this position,  
5 Woodward points to Champion's expert who opined the "actual average residential customer bill  
6 impact [would be] almost three times higher than 4.54 percent."<sup>83</sup>

7 However, as noted earlier in the section of this brief that addresses Mr. Gayer's claims, Staff's  
8 expert supports APS's calculation of the 4.54 percent average increase in the base rate. As explained  
9 by Champion's expert, "[i]t is truly an average of when you take all bills into account in a statistically  
10 valid manner" and "you sum everything and divide by the number of observations you have."<sup>84</sup> The  
11 statistical manner of calculating the 4.54 percent **average** base rate necessarily includes customers  
12 who have higher bills as well as customers whose bills are lower.<sup>85</sup> In the absence of evidence of  
13 flaws in the ratemaking process resulting in the 4.54 percent average base rate increase, Mr.  
14 Woodward's assertion that one aspect of the results alone--that some customers pay higher bills--does  
15 not equate to unjust and unreasonable rates.

### 16 17 **3. Gayer's Notice Regarding His First Amended Complaint**

18 On October 9, 2018, Intervenor Gayer filed a Notice that he "...will pursue relief under the  
19 First Amended Complaint if the relief obtained under the Champion Complaint is not satisfactory."<sup>86</sup>

20 The Gayer First Amended Complaint was filed on January 19, 2018, to include claims of  
21 consumer fraud under A.R.S. § 44-1521(5), discrimination against "new" customers related to  
22 mandatory Time-Of-Use rates, and violations of due process.<sup>87</sup> Notably, the Gayer First Amended  
23

24  
25 <sup>81</sup> Hobbick Direct Test., Ex. APS-4.

26 <sup>82</sup> Woodward Rebuttal, Ex. Woodward-3 at 3-5.

27 <sup>83</sup> Woodward Rebuttal, Ex. Woodward-3 at 5.

28 <sup>84</sup> Tr. Vol II at 202-203.

<sup>85</sup> Tr. Vol. II at 203-204.

<sup>86</sup> Gayer Notice re First Amended Complaint at 1.

<sup>87</sup> Procedural Order of March 5, 2018 at 2.

1 Complaint was filed as an amendment to the Champion Complaint, not to a complaint filed in this  
2 docket by Gayer.

3 On January 30, 2018, APS filed a Response to Gayer's Motion to Amend. Staff was not  
4 participating in this case at that time, but Staff believes that the section of the APS Response that  
5 responds to Gayer's First Amended Complaint, is especially well taken, so much so that Staff will  
6 repeat it, verbatim, below:

7  
8 One Party cannot amend another party's pleading. The Arizona Rules  
9 of Civil Procedure only empower a party to amend its own Pleading,  
10 providing that "a party may amend *its* pleading (Ariz. R. Civ. P.  
11 15(a)(2) (emphasis added). Rule 15 does not provide a basis for a party  
12 to amend another party's pleading, nor does any other rule. This kind of  
13 limitation is not only inappropriate, but critical for litigation to function  
14 properly. A party relies on its pleadings as the basis for legal claims  
15 that vindicate its legal rights. If those pleadings could be amended by  
16 someone else, that party's right to be heard would be thwarted. Mr.  
17 Gayer is not permitted to amend Ms. Champion's complaint, and his  
18 "First Amended Complaint" should be rejected. (APS Response, p. 2,  
19 1-9)

20 As noted in the March 5, 2018 Procedural Order (the "Procedural Order"), Champion also  
21 objected to Gayer being allowed to amend the Champion Complaint<sup>88</sup>. However, the Procedural  
22 Order also:

- 23
- 24 a. Ordered that Gayer's claims in his First Amended Complaint be kept separate  
25 from the Champion Complaint, and that proceedings relative to them be stayed  
26 pending the outcome of the Champion Complaint.
  - 27 b. Ordered that Gayer is deemed a party to the Champion Complaint.
  - 28 c. Ordered that the Gayer Complaint shall be treated as a separate complaint, and that  
all proceedings based on the claims raised therein shall be deemed stayed pending  
further order of the Commission.<sup>89</sup>

29 Staff joins, and supports, APS's January 30 Response, and agrees that, under the Arizona  
30 Rules of Civil Procedure, one party cannot amend another's pleading. Gayer should not be allowed  
31 to amend Champion's complaint. Further, to the extent that the Procedural Order, as referenced in  
32

33  
34 <sup>88</sup> March 5, 2018 Procedural Order at 4, fn 6).

35 <sup>89</sup> *Id.* at 5.

1 subparagraphs a, b, and c, above, can be read otherwise, Staff would urge the Administrative Law  
2 Judge to reconsider any rulings to the contrary.

3 In addition, Gayer was a party to the APS rate case. If he was aggrieved by the decision, his  
4 remedy was to file a petition for rehearing and an appeal of the Commission decision. He did not and  
5 should not have a second bite at the apple now by relying upon the complaint process contained in  
6 A.R.S. § 40-246 to remedy his failure to file a petition for rehearing and an appeal.

7  
8 **VII. THE COMMISSION SHOULD DENY THE RELIEF REQUESTED BECAUSE**  
9 **CHAMPION HAS NOT MET THE REQUISITE BURDEN OF PROOF IN THIS**  
10 **CASE.**

11 Complainants have met the prerequisites for an initial hearing under the statute and the  
12 Commission has allowed them the opportunity to present evidence before Chief Administrative Law  
13 Judge Rodda.<sup>90</sup> Attorney General Opinion 69-6, of which multiple parties reference, suggests that a  
14 hearing to determine whether or not there is sufficient evidence to warrant a full-scale rate hearing is  
15 sufficient to comply with the relevant provisions of A.R.S. § 40-246. If the Commission agrees that  
16 Champion has not demonstrated by preponderance of the evidence that APS's rates are unjust and  
17 unreasonable, the Commission will have already met its obligations under A.R.S. § 40-246.

18 Under a case interpreting a similar statute in Connecticut, the Court found that Complainants  
19 are required to make a prima facie showing that the rates are unjust and unreasonable before a  
20 complete rate case may proceed or other action is taken by the Commission.<sup>91</sup> Staff disagrees with  
21 Complainants that there has been a prima facie showing of unjust and unreasonable rates in this case  
22 as discussed above.<sup>92</sup> The evidence establishes that APS's rates established in Decision No. 76295  
23 are just and reasonable.<sup>93</sup> While there are on-going issues with customer education and outreach, the  
24 rates that are in effect today have been approved by this Commission and appropriately implemented  
25 for customers.

26 <sup>90</sup> See Docket No. E-1345A-18-0002.

27 <sup>91</sup> *Residents of City of Hartford v. Hartford Electric Light Company*, 9 P.U.R. NS 228 (1935).

28 <sup>92</sup> Moreover, Champion has apparently requested a rehearing, which she is not entitled to in this  
case under A.R.S. § 40-253.

<sup>93</sup> See Decision No. 76295.

1 One of the questions posed by Chief ALJ Rodda at the end of the hearing was, if it is found  
2 that Champion met her burden of proof, whether the Commission could reopen the existing case and  
3 undertake a partial adjustment to residential rates. The Commission can always reconsider any  
4 decision pursuant to A.R.S. § 40-252, including taking such action in response to a complaint filed  
5 under A.R.S. § 40-246.<sup>94</sup> Nothing under A.R.S. § 40-246 restricts the remedies available to the  
6 Commission. Any such restriction if it were to exist would likely run afoul of the Commission's  
7 constitutional authority under art. XV, § 3.

8 At the end of the hearing, Chief ALJ Rodda also asked the Parties to consider additional  
9 remedies that the Commission could consider in this case or a future rate case to address concerns  
10 raised regarding education, customer notice of rate increases and other remedies that might be  
11 appropriate. There was considerable confusion over the bill impact statement and there was also  
12 significant concern expressed regarding customer education. While no remedies with respect to rates  
13 are available to Champion under A.R.S. § 40-246, the Commission could consider the remedies  
14 proposed below for Commission consideration in response to Champion's complaint. Many of these  
15 remedies would be prospective in nature, to be considered in future rate cases filed by APS.<sup>95</sup> They  
16 could also be considered in rate cases filed by other utilities which raise similar issues.

- 17 • **More Customer Education:** The Staff Report addresses the need for educating  
18 customers regarding optimal rate options, noting that "[a]ccording to Ms. Hobbick, 'as  
19 of May 1, 2018, nearly half of all residential customers were on their most economical  
20 rate, and further rate optimization has been ongoing since the transition,"<sup>96</sup> which  
21 means there are still more than half of the customers that may not be on their optimal  
22 rate. Therefore, additional customer education or engagement should be encouraged to  
23 assist those customers choose their own most economical rate."<sup>97</sup> While APS should  
continue with the education and outreach it has initiated to date, it is clear from the  
Public Comments submitted at the hearing<sup>98</sup> as well as filed in the docket, and the  
testimonies of APS witnesses Mr. Faruqui<sup>99</sup> and Mr. Miessner that many APS  
customers are still experiencing difficulty understanding the impact of the rate  
changes—both as to their bills as well as their selected plan and energy usage.<sup>100</sup>

24 <sup>94</sup> See Decision No. 74881 in Docket No. W-01303A-09-0343.

25 <sup>95</sup> In accordance with the Settlement Agreement a new rate case cannot be filed by APS prior to  
June 1, 2019.

26 <sup>96</sup> Staff Report, Ex. S-1 at 2.

27 <sup>97</sup> *Id.* at 4.

28 <sup>98</sup> Tr. Vol. I at 8-53; Vol III at 402, 403 thru 420.]

<sup>99</sup> Tr. Vol II at 342-344.

<sup>100</sup> Tr. Vol III at 603-604.

1 Within 90 days from the date of the decision in this matter, APS should be required to  
2 provide notice to all customers which invites them to have a one on one meeting with  
3 a Company representative to go over the new rate plans approved by the Commission  
the customer's usage characteristics and how the customer can decrease his or her  
energy usage. The cost associated with this effort are to be borne by the Company's  
shareholders.

- 4 • **Stakeholder Group:** At the hearing, Mr. Snook agreed that APS would be willing to  
5 form a stakeholder group for input on how best to provide customers with notice of  
6 future rate increases, provide better explanations regarding average percentage  
7 increase to the residential customer so as to "communicate complexities more simply  
in the next rate case," and to focus on education to promote and assist customer  
understanding of new rate design plans and how best to control usage for lowering  
bills.<sup>101</sup>
- 8 • **Outreach:** Implementation of direct one-on-one outreach to those customers not on  
9 the optimal plans is suggested. While recognizing that some customers may  
10 intentionally choose a plan other than the one that potentially saves them the most  
11 money, where possible, consider documenting customer rationale for rejecting the  
optimal plan for guidance in future rate design. Also, direct one-on-one outreach to  
customers who appear to be outliers with respect to the new rate structure is  
recommended.
- 12 • **Adjustor itemization:** Provide clarification of adjustors and the effects on customer  
13 bills, possibly including line item descriptions.
- 14 • **Charts illustrating new rates:** Provide charts such as that produced by Ms. Hobbick  
15 to explain to customers how the base rate *average* impacts their bills over a *full* year,  
to aid in removing the perception that each of their monthly bills will be increased by  
the stated base rate percentage as opposed to being averaged<sup>102</sup>
- 16 • **Look to other utilities:** Consider successful methods used by other utilities to  
17 educate customers, such as offering risk-free guarantees to customers for trying new  
rate plans.

18 Given the negative customer feedback and experiences reported in Champion's case, APS  
19 is not precluded from considering and incorporating any of the above-referenced suggested actions in  
20 its remaining outreach efforts in order to ensure greater customer understanding of its current rate  
21 plans and average base rate increase. At the hearing, Mr. Miessner indicated a willingness to  
22

23 <sup>101</sup> Tr. Vol. X 833-835.

24 <sup>102</sup> Hobbick Direct, Ex. APS-4 at Attachment JEH-1DR] Ms. Hobbick testified that APS filed a  
25 customer outreach and education plan to inform customers about their rate options and provide  
26 tools on managing energy usage on the new rates as well as allocating \$5 million to implement  
27 these strategies. The strategies included sending letters to customers explaining bill calculation  
28 models, improving online rate comparison tools and providing new information, participating at  
informational community events, mass media education, email outreach, including printed inserts  
in customer bills, providing personalized letters, and establishing sweepstakes which included  
rewards such as smart thermostats and home energy management devices.; Tr. Vol IV at 650-653.

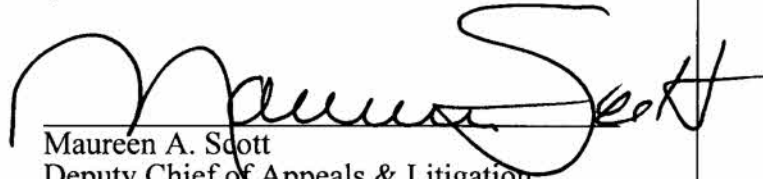


1 consider improvements to their communication efforts, stating “[b]ut I am listening as well. [The  
2 authorized increase to base rates] is what the settling parties decided how to kind of reflect this  
3 increase. And I think it is accurate. I think it is fair. But, you know, I am listening as well if there  
4 [were] improvements we can all talk about or other information we can provide. We are certainly  
5 listening.”<sup>103</sup>

6 **VII. CONCLUSION.**

7 Based upon Staff’s analysis and findings, Staff recommends that the Commission deny the  
8 relief requested in this case, since the complainant has failed to make a prima facie showing that  
9 APS’s rates are unjust and unreasonable.

10 RESPECTFULLY SUBMITTED this 26<sup>th</sup> day of October 2018.

11 

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28 <sup>103</sup> Tr. Vol. III at 604.

1 On this 26<sup>th</sup> day of October, 2018, the foregoing document was filed with Docket Control as a  
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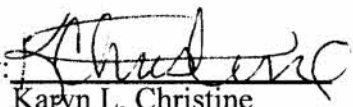
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